

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PAUL V. ROGERS,

Petitioner,

v.

PAT GLEBE,

Respondent.

CASE NO. 12-5984 RJB - JRC

ORDER ADOPTING THE REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge J. Richard Creatura. Dkt. 15. The Court has considered the Report and Recommendation, Petitioner's Objections to the Report and Recommendation, and the remaining file.

Petitioner files his petition pursuant to 28 U.S.C. § 2254, seeking relief from a 2002 state court conviction where Petitioner pled guilty to four counts of second degree child molestation and was sentenced to 120 months of incarceration and 36 months of community custody for each offense, with the sentences running consecutively. Dkt. 5.

1 The Report and Recommendation recommends the petition be dismissed with prejudice
2 as time barred pursuant to 28 U.S.C. § 2244(d)(1)(A). Dkt. 15.

3 Petitioner files objections, and argues the merits - that the state court committed error by
4 failing to determine whether “the concurrently served sentences should be counted as one
5 offense or separate offenses – by determining whether they constitute ‘same criminal conduct’ –
6 pursuant to [RCW] § 9.94A.360(5)(a)(i).” Dkt. 16. Petitioner argues that his petition is not time
7 barred under Washington’s RCW § 10.73.090. *Id.*

8 The Report and Recommendation (Dkt. 15) should be adopted. As stated in the Report
9 and Recommendation, Petitioner failed to file his petition within one year of the date his state
10 court judgment became final. Petitioner failed to provide any basis for statutory or equitable
11 tolling. He has not shown that Washington’s RCW § 10.73.090 applies to this federal action for
12 habeas relief. This petition should be dismissed.

13 Further, as stated in the Report and Recommendation, a certificate of appealability should
14 be denied.

15 Accordingly, it is **ORDERED** that:

- 16 • The Report and Recommendation (Dkt. 15) is **ADOPTED**;
- 17 • This petition is **DISMISSED**; and
- 18 • The Certificate of Appealability is **DENIED**.

19 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
20 to any party appearing *pro se* at said party’s last known address.

21 Dated this 25th day of March, 2013.

22 

23 ROBERT J. BRYAN
24 United States District Judge